

Supreme Court, U. S.

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IN THE
Supreme Court of the United States

October Term, 1977

No. 77-109

ERNEST CHARLES WILSON, VIOLET STEWART GOETCHIUS, MARY C. WILLIAMS and ROBERT B. FROST,

Petitioners,

vs.

JOHN J. HINKLE, FRANCES B. DEVLIN, ONNALEE O. DOHENY, ENNIS McGINLEY, BETTY B. LETTEAU, FRIEDEL A. SCHRAMM JENSEN, GERALD A. GRIMES, CHRIST CHURCH, UNITY, a California non-profit corporation, and CHRIST UNITY MANOR, a California non-profit corporation,

Respondents.

**Petition for Writ of Certiorari to the Court of Appeal,
Second Appellate District, State of California, Division Two.**

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JOHN J. HINKLE, FRANCES B. DEVLIN, ONNALEE O.
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poration, and CHRIST UNITY MANOR, a California
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Respondents.

**Petition for Writ of Certiorari to the Court of Appeal,
Second Appellate District, State of California, Divi-
sion Two.**

*To the Honorable Chief Justice and the Associate
Justices of the Supreme Court of the United States:*

Petitioners respectfully pray that a writ of certiorari issue to review the judgment of the Court of Appeal, Second Appellate District, State of California, Division Two.

[That judgment affirmed, solely on the basis of this Court's decision in *Hull*,¹ the order dismissing petitioners' complaint (in a civil representative trust and contract action) on respondents' demurrer for alleged lack of jurisdiction in *any* civil court, to enforce the secular *trust* and *contract* breached by respondent trustees and also to recover the church and church trust properties (exceeding \$5,500,000) which were appropriated by respondents, who had a secular trust status as trustees of the church (non-profit religious) corporation trust, *pending disciplinary ecclesiastical proceedings by the ecclesiastical authority*. Those proceedings were principally directed to revoking the ordination of the principal respondent John J. Hinkle, temporary minister (but ordained by the said ecclesiastical authority) for violation of his ordination and the ecclesiastical Code of Ethics and Standards governing him, and also for the violation of his trust and contract obligations. Hinkle was a member of the ecclesiastical authority's association of member ministers and churches and in fact a member of its association's executive committee.

Respondents were bound to participate in those ecclesiastical proceedings and at first agreed to do so but pending arrival of the investigating committee (pursuant to the ecclesiastical authority) refused to do so, obstructed the proceedings, in concert with the other individual respondents, controlled by him, changed the locks in the church properties, and thereby excluded the committee from conducting its ecclesiastical proceedings, forthwith discharged the assistant minister for refusing to abandon his ordination and ministry (under the said ecclesiastical authority) and Hinkle

¹*Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* (1969), 393 US 440, hereinafter *Hull*.

publicly abandoned his ordination (the equivalent to defrockment by the said ecclesiastical proceedings) and publicly withdrew from his ministry and he and the other individual respondents (except Grimes who was later appointed assistant minister although not ordained by the said ecclesiastical authority), whom he had appointed trustees and general members of the corporation, appropriated and retained physical control and use of all the church trust properties for purposes other than the church's trust purposes and for which purpose the substantial properties had been contributed and acquired. Respondents diverted all the church properties to a different use and ministry (condemned in *Watson v. Jones*, 80 US 666, and all other cases involving that issue). The posture of the parties and the nature of this case are singularly like those in *Hull* and *Serbian*,² petitioners occupying the posture of the successful parties whose rights were enforced by *Hull* and *Serbian* and also by *Watson*. Hinkle's conduct was singularly like that of the bishop in *Serbian*.]

Opinion Below

That Court's opinion (Appendix D) is reported in 67 CA3d 506, 136 CR 731.

It does not state this case on its record, as to parties, subject matters, cause of action or applicable law, as specified in the petition for rehearing.

[Record references are to the Transcript of Record.]³

²*Serbian Eastern Orthodox Diocese for the United States of America and Canada, et al. v. Dionisije Milivojevich* (1976), 426 US 696, hereinafter *Serbian*.

³That Record contains the entire record in the trial and appellate courts. It includes in the first of the 2 consolidated appeals (only the first is relevant and involved in this petition) the clerk's transcript of 2 volumes (all the pleadings and orders
(This footnote is continued on next page)

[The allegations of the complaint are deemed true on demurrer. *Stigall v. Taft*, 58 C2d 565, 25 CR 441. They are actually true; the facts and events are publicly recorded not only in the official and property records, also disclosed in the extensive discovery in this case before the subject dismissal order, but were disclosed to the various public media by Hinkle].

Jurisdiction

The subject decision was entered on February 25, 1977. Petitioners' petition for rehearing was timely filed on March 14, 1977 and denied on March 22, 1977 (Appendix E). Their petition for discretionary hearing by the Supreme Court of California was timely filed on April 6, 1977 and denied, without hearing, on April 21, 1977 (Appendix F).⁴

Petitioners have not requested an extension of time within which to petition for certiorari.

This Court's jurisdiction is invoked under 28 USCA § 1257(3). This petition is timely filed within 90 days from April 21, 1977.⁵

of the lower court), the reporter's transcript of 1 volume (hearing on the motion to reconsider the demurrer and opposition to it), the opening, reply and closing briefs, the opinion, the petition for rehearing, the answer to it, the petition for hearing, the answer to it, the order denying it, and the judgment for the remittitur). References will be respectively made as CT, RT, OB, RB, CB, pet.rhg., ans.rhg., pet.hg., ans.hg., and orders (with further identification of the latter). The second appeal was to complete review of the case. It was from an order denying petitioners' motion to tax costs, not timely filed and dependent upon a proper judgment.

⁴The timely proceedings for rehearing and hearing were in accordance with *California Rules on Appeal* 24(a), 27(a), (b), 28(a), (b). The substance of their provisions is set out in Appendix H.

⁵Petitioners duly appealed as of right to the California Court of Appeal, which affirmed the order of dismissal on demurrer (an appealable order). The decision and judgment involved are reviewable by this Court under 28 USCA § 1257(3);

Questions Presented.

Brief Summary of the Case.

The Unity Movement, a distinct, religious concept of Practical Christianity, with national and international members, teachers ministers and churches, known as Unity, was established by Charles and Myrtle Fillmore, in 1887. It is world renowned for its Silent Unity (accessible world wide, even by telephone, to those in spiritual need) and for its "quiet prayers and church services."

Its ecclesiastical fountainhead, authority and headquarters, in Unity Village, Kansas City, Missouri, were in Unity School of Christianity (hereinafter USC). It has and always had an ecclesiastical structure, which establishes its doctrine and ecclesiastical beliefs and practices and determines and enforces all ecclesiastical matters.

It alone has authority to ordain (and defrock) ministers in Unity; to authorize Unity Churches (and revoke their Unity status); only ordained Unity Ministers can administer a Unity Church and only practice Unity using Unity textbooks and literature; they were assigned by USC to the various Unity Churches. There are specific Unity standards, codes of ethics and established ecclesiastical structure and procedures, including complaints regarding churches and ministers, committee investigations, hearings, due process provisions, appearances and representation, including by legal counsel, reports and recommendations; right to appeal; determination of the proceedings; removal or replacement of ministers and churches; if problems still are not solved by such proceedings, eventual procedure to sub-

Douglas v. People of the State of California (1963), 372 US 353, 4, rhg.den. 373 US 905; *United States v. Healy* (1964), 376 US 75, 7; *Banks v. California* (1969), 395 US 708, rhg. den. 396 US 869.

mit the latter to the *congregations* of the churches and additional procedures thereafter.

USC organized and delegated certain ecclesiastical authority to Unity Ministers and Unity Church associations, originally Unity Annual Conference (hereinafter UAC); later Unity Ministers Association (hereinafter UMA); and then the Association of Unity Churches (hereinafter AUC). Unity Ministers must preach "without competition and contention."

As of January, 1973 there were 595 ordained Unity Ministers and associate ministers and 307 Unity Churches in this country and in foreign countries.

Petitioner Wilson is the dean of Unity Ministers, ordained in 1934. He was delegated by USC in 1938 to found the subject Church, Christ Church Unity, was and remained its founder-permanent minister. The respondent California non-profit, religious corporation, Christ Church Unity, was organized later. With the spiritual and secular contributions from its congregational members and Wilson's personal funds and credits, the Church became the largest Unity Church in the United States, with 8500 members, with a fluid membership averaging 5000, with additional students and contributors in this and foreign countries.

All contributions were made to and accepted by it in trust for its Unity Ministry as a Unity Church.

Hinkle was ordained as a Unity Minister in 1949. Assigned as a Unity Minister to a Unity Church in Sacramento, that ministry was unsuccessful including his efforts to establish a residential project (a manor).

At USC's and AUC's request, Wilson took an indefinite leave of absence to help a Unity Church in Kansas City because of a change of ministers. He then requested Hinkle to act as temporary minister, during Wilson's leave of absence, on condition that Hinkle faithfully

continue Wilson's Unity Ministry in all specifics and to use and apply all assets, contributions and receipts for the Unity Ministry of the Church, Hinkle to adhere to the Unity Movement and to teach and preach only Unity. He accepted the same and was employed on those terms and conditions. Wilson had the right to return at any time and resume his ministry.

Wilson had contributed his personal funds and credit in the acquisition of church personality, the parsonage (and its furnishings) in which he resided. The trustees resolved Wilson would have a life tenancy in the parsonage. The corporation and Wilson executed a written contract (Exhibit A to the complaint) (TR. CT 44-5) to that effect, which recited that for "good and valuable consideration," he had a life tenancy and right to occupy the parsonage and during his leave of absence Hinkle could occupy it while acting as temporary minister "in the place and stead" of Wilson. *Hinkle also executed the contract.*

Wilson demanded to return and resume his founder-permanent ministry, occupy the parsonage for his lifetime and resume his general and trustee memberships (from which he never resigned and from which he was never removed in accordance with the by-laws) but these were refused by respondents.

The complaints to the ecclesiastical authorities regarding Hinkle came from various Unity Churches, Ministers and many members about his conduct, including his new and different ministry, which included the practice of "miracle healings" and purported "instant healing of serious and even terminal illnesses, including cancer" with potential exposure to the Church and its temporalities for liabilities; he publicly criticized Unity and extolled his new and different ministry; he attempted to induce Unity members of the Church

and other Unity Churches and Unity Ministers to abandon Unity and to follow him in his new ministry.

Faced with the request to resume his Unity ordination and ministry or go elsewhere with his new beliefs, at a trustees' meeting Respondent Devlin stated, "I want to go on record for taking Unity out of Christ Church and follow John" (referring to Hinkle).

The church corporation by-laws provided on its dissolution its assets would be distributed to USC for the Unity Movement. Hinkle had the by-laws changed to provide that upon dissolution distribution of the assets would be made to a charitable entity (selected by Hinkle) and not USC.

Petitioner Goetchius was an ordained Unity Minister, trustee and general member and created and supervised the Church's hospital ministry. She never resigned and was never removed, in accordance with the by-laws, as a trustee or general member. *She died on June 9, 1977.* Although she was excluded from her ministry and lost the emoluments of that position, the complaint is not based upon her said rights but upon her status principally as corporate trustee and general member, acting *representatively for the benefit of the Church, its corporation and all its members.* Accordingly, she claimed no such interest individually in the complaint which could be passed on to her representative and is not a present party member of petitioners.

Petitioner Williams had been Sunday School superintendent, member of committees and is co-chairman of the membership committee to maintain this action. Petitioner Frost was a member of various committees and is Williams' co-chairman.

The church corporation is named as a defendant and also Christ Unity Manor, a California non-profit corporation, holding title to the residential project ac-

quired with the church corporation's assets and credit, its directors being chosen by trustees of the church corporation.

The corporate by-laws provided for congregational members unlimited in number and without property rights. However, it always was the usage, custom and practice of the Church and its Unity Ministry to submit all financial and property affairs of the Church and its corporation to them and they were considered to be, actually were and were led to believe to be, beneficiaries of the Church and its properties to the extent that the same would all be applied to its Unity Ministry, to which they contributed, and they would use the same as such. In fact, ultimately the ecclesiastical proceedings, as noted, provided for submission of ecclesiastical questions, unresolved up to that point, to the *congregation*, with ecclesiastical proceedings thereafter.

Questions Presented.

1. Has the California civil jurisdiction over non-profit religious corporations created under California law and over their trust corpus and personnel been removed by the First and Fourteenth Amendments? Or by *Hull?* Or by *Serbian?*
2. Is the conduct of respondents, complained of in the complaint, particularly respondent Hinkle, which is similar to the conduct of the bishop and his followers in *Serbian*, occupying similar status and posture and involved in similar ecclesiastical proceedings, protected by the First Amendment, whereas it was not in *Serbian*?
3. Can trustees of a non-profit religious corporation breach their trust and divert the trust corpus to other than trust purposes? Do the First Amendment

Religion Clauses permit such conduct? Does *Hull?* Does *Serbian?*

4. Can such *trustees do "as they see fit"* with the trust corpus, as respondents contended (TR. RB 24) and the Court of Appeal agreed by its affirmation, rather than only discharge their trust? Do the First Amendment Religion Clauses permit such conduct? Does *Hull?* Does *Serbian?*

5. Can ordained ministers renounce the authority of the ecclesiastical bodies that ordained them and renounce their ministry and take with them and their followers the trust properties of the non-profit religious corporations which employed them? Do the First Amendment Religion Clauses permit such conduct? Does *Hull?* Does *Serbian?*

6. Can an ordained minister refuse to participate in ecclesiastical proceedings by his ecclesiastical authority regarding his ecclesiastical status and obstruct them and divert the church property to other organizations and purposes? Do the First Amendment Religious Clauses permit such conduct? Does *Hull?* Does *Serbian?*

7. Who are entitled to property of a non-profit religious corporation acquired and used for a specific ecclesiastical organization and doctrine, the members who continue as such or the members who terminate their membership and *by self-help* take the property with them?

8. Is *self-help*, consisting of trustees of a non-profit religious corporation diverting its trust property to other than trust purposes, permitted by the First Amendment? By *Hull?* By *Serbian?*

9. Is an action by trustees of a non-profit religious corporation, who are faithful to its trust and the organization and doctrine of its church, against trustees of that corporation (who are not so faithful and have

diverted its trust property) to enforce the trust and their trust obligations and to recover the trust property for the benefit of the trust beneficiaries, after the ordained minister of the church (who is also one of the latter group of trustees) refuses to participate, with the other trustees in his group, in the ecclesiastical proceedings regarding his ecclesiastical status, proscribed by the First and Fourteenth Amendments? By *Hull?* By *Serbian?*

Constitutional Provisions Involved.

Directly involved in the trial court and the *sole basis* for the subject decision and judgment of the Court of Appeal is the *United States Constitution, First Amendment, Religion Clauses*.⁶

The Fourteenth Amendment⁷ applied the First to the states.⁸

When Federal Question Raised.

That issue was raised at the first stage of the action by respondents' demurrer to petitioners' complaint that the Superior Court did not have jurisdiction of the action because of the alleged application of the First Amendment, respondents contending *Hull* removed *all civil jurisdiction of the California civil courts over the secular, civil subject matter (non-profit, religious corporation with the statutory and case law status as trustee and its properties as trust corpus) and parties (trustees, i.e., corporate trustees, and trust beneficiaries, i.e., members)*. [There were other general and special grounds of demurrer based on California law, involving

⁶They are quoted in Appendix I.

⁷It is quoted in Appendix I.

⁸*Hamilton v. Regents U.C.*, 293 US 245, *r.hg.den.* 293 US 633.

no federal question, also sustained, the general grounds being included within the scope of the jurisdictional ground based on the First Amendment and *Hull*. There was no merit to them under California law. However, the Court of Appeal based its decision exclusively on the First Amendment and *Hull* issues (Appendix D, p. 10).]⁹

Statement of the Case.

The summary of this case was partially stated at the outset of this petition and also under "Brief Summary of the Case" under "Questions Presented."

The following illustrates the marked similarity, factually and legally, of *Hull* and *Serbian* with this case and the consistency of their decisions with established principles involved in church litigation and with petitioners' case.

Hull involved 2 local churches withdrawing from the hierarchical general church (Presbyterian) for alleged departure from doctrine. The ecclesiastical structure of such a church is pyramidal, i.e., the authority descends and the obligation ascends. This was an inter-faith dispute between the subordinate body questioning the superior body on doctrine. *It was not a case in which an attempt was made to divert or withdraw from Presbyterian to any other denomination (as in this case).* As in this case, ecclesiastical proceedings were started, conciliation was sought, the dissidents refused and were then acknowledged to have withdrawn. The dissidents "made no effort to appeal . . . to higher church tribunals" (precisely as respondents did not in this case) but filed separate civil suits to enjoin the general church from trespassing on the property

⁹There is no merit to any of the grounds of the demurrer under California law. See Appendix K.

(*respondents resorted to self-help*). As Hinkle did, the dissenters renounced the general church's authority over them.

Hull applied the general principles that ecclesiastical decision of ecclesiastical authority in ecclesiastical matters, properly rendered, must be accepted by civil courts and civil authority as a *fact*, which the civil authority then applies in the resolution of the civil issues before it. However, *Hull* involved state *legislation* which attempted to fix ecclesiastical standards for those fixed by the ecclesiastical authorities. This could not be done under the guise of legislation no more than ecclesiastical authorities can fix civil determinations on civil subjects under the guise of religion. No such factor is in this case.

Hull was fully digested in TR. OB 26-9; TR. CB 33-41 and TR. pet.hg. 33-4.

Serbian also involved a hierarchical church and bishop in strikingly similar posture as Hinkle not only in status but in conduct which led to disciplinary ecclesiastical proceedings in which the bishop participated equivocally and finally refused to accept ecclesiastical determinations. Like Hinkle he mailed circulars creating dissension, issued press releases, continued to officiate although his ministerial authority had been ecclesiastically terminated, and declared his diocese "completely autonomous" and disconnected from the ecclesiastical authority which had ordained him and authorized the diocese (like Hinkle).

Serbian (as Hull) protected the ecclesiastical authority as to property over the diverting and dissenting bishop and his group and organizations.

REASONS FOR GRANTING THE WRIT.

I

Preliminary Statement.

“The guarantee of religious freedom has nothing to do with the property. It does not guarantee freedom to steal churches.” *Schnorr's Appeal*, 67 Pa 138, 46-7.

The First Amendment embraces two concepts—“*freedom to believe and freedom to act. The first is absolute, but in the nature of things, the second cannot be*” (emphasis added). *Cantwell v. Connecticut*, 310 US 296, 303-4.

“. . . laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices.” *Reynolds v. United States*, 98 US 145, 66.

Reynolds and the other Mormon Church cases illustrate that fundamental distinction. Polygamy was a fundamental doctrinal belief of that church. That defense was not accepted. That church’s properties were escheated in *Late Corporation . . . Latter Day Saints v. United States*, 136 US 1.

Even the freedom to believe is subject to testing for good faith. For example, it was held that pretending to believe in supernatural powers for the purpose of procuring money and the use of the mails for doing so, was punishable *despite the claim of religion*. *New v. United States*, 245 F 710, cert.den. 246 US 665.

The reasons for granting the writ particularly include because neither *Hull* nor *Serbian* hold as the trial court and the Court of Appeal stated; because integrity of compacts of significant individual and public importance is involved; because of the extensive adverse

effects on discipline and order in all Unity Churches and among all Unity ministers and organizations as well as all other churches and ministers of all other denominations; no church organization will be immune from such conduct; congregations seeking comfort and contributing for the privilege of doing so in churches of their choice will have no faith in the integrity of our juridical system to permit them to exercise the very constitutional right which such conduct destroys.

Non-profit religious corporations are creatures of statute, are bound and controlled by statute and are separate from the ecclesiastical body. *Wheelock v. First Presbyterian Church*, 119 C 477, 51 P 841. They are the material means to the church’s spiritual ends.

Absent “fraud, collusion, or arbitrariness” (the latter modified by *Serbian*) the ecclesiastical decisions by the proper church tribunals on purely ecclesiastical matters are accepted as conclusive facts before civil courts “because the parties in interest have made them so by contract or otherwise.” *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 US 1, 16.

Church property matters are for the civil courts and “ecclesiastical decrees bearing upon such disposition are not binding upon judicial tribunals.” *Providence Baptist Church v. Superior Court*, 40 C2d 55, 251 P2d 10.

“When a civil right depends on an ecclesiastical matter, it is a civil court, and not the ecclesiastical which is to decide. The civil tribunal tries a civil right, no more, taking the ecclesiastical decisions out of which the civil right arises, as it finds them” (emphasis added). *Harmon v. Dreher* (1843), 1 Speer’s Eq. 87. *Watson* described it as “one of the most carefully and well-considered judgments on the subject” (80 US 677).

II

**Non-Profit Religious Corporations Are Trusts and
Are Bound by Trust Principles.**

Property vests in a religious corporation, *as a charitable use*, with it as trustee who "can no more divert the property from the use to which it was originally dedicated, than any other trustees can"; *if attempted, equity will enforce the trust; adherents to the church as organized constitute the "true congregation and corporation."* *Schnorr; Roshi's appeal*, 69 Pa 462.

In California "the property of a charitable or religious non-profit corporation is held in trust 'to carry out the objects for which the organization was created.'" *Metropolitan Baptist Church of Richmond, Inc. v. Younger*, 48 CA3d 850,7, 121 CR 899,903.

"*California has expressed a strong public policy that trust property of a non-profit religious or charitable corporation be not diverted from its declared purpose.*" *Younger, supra; Los Angeles County Pioneer Society v. Historical Society of Southern California*, 40 C2d 852, 257 P2d 1; *Pacific Home v. Los Angeles County*, 41 C2d 844, 264 P2d 539; *Holt v. College of Osteopathic Physicians and Surgeons*, 61 C2d 750, 40 CR 244.

The California Attorney General has the power and duty to enforce the California non-profit, religious corporation trusts but this is not exclusive, petitioners can do so. *Holt*.

III

Non-Profit, Religious Corporations Before the Courts.

"Religious organizations come before us in the same attitude as other voluntary associations for benevolent or charitable purposes, their rights of property, or

of contract, are equally under the protection of the law, and the actions of the members subject to its restraints . . . and that our *duty* is the simple one of applying those principles to the *facts before us.*" *Watson*, 80 US 670.

IV

**Statement of Principles Regarding
Ecclesiastical-Civil Authorities.**

If the church does not have an ecclesiastical authority for the determination of ecclesiastical questions, then the universal rule is that the civil courts will adjudicate the property and all secular rights and obligations as owned and controlled and to be used by those members of the church who *adhere* to it as it was organized and for which the properties were acquired. *Watson; Bouldin v. Alexander*, 15 Wall 131; *Whipple v. Fehsenfeld*, 173 Kan 427, 249 P2d 638, cert.den. 346 US 813, rhg.den. 346 US 918; *Schnorr; Addickes v. Adkins* (1975), Conn, 215 SE2d 440 (post-Hull).

"It is not within the power of the church or an individual to effect the status or civil relations of persons. This may only be regulated by the *supreme civil law.*" (emphasis added) *Williams v. Williams* (1976), Okla. 543 P2d 1400,3.

The wall separating church and state stands in both directions; if there cannot be a gateway from the civil side to the religious side there cannot be one from the religious side to the civil side. The civil subject does not become ecclesiastical by being moved over the border into the ecclesiastical realm. Nor can the ecclesiastical subject superimpose itself into the civil realm. *Personal and civil rights and property remain such wherever placed.*

“...the essential problem nevertheless is to ascertain from the acts, dealings, and usages of the parties where the various rights rest in order to determine the ownership of the civil and property rights, even though some so-called ecclesiastical rights are involved.” *Rosicrucian Fellowship, et al. v. Rosicrucian Fellowship, etc., et al.*, 39 C2d 121, 245 P2d 481, cert. den. 345 US 938.

The tort of conspiracy has been determined in civil church litigation including in *Baker v. Ducker*, 79 C 365, 21 P 264 and *St. James etc. v. Kurkjian*, 47 CA3d 547, 121 CR 214, hereinafter *Kurkjian*, (decided by the same Court of Appeal).

V

The Membership Concept of Organizations.

Voluntary membership in any organization necessarily requires acceptance by the member of the organization's authority, purpose, laws and regulations. Any member is free to change his belief and leave but he cannot take with him when he leaves any of the organization's properties. In churches it includes adherence to the doctrine and organization of the church. *Permanent Committee of Missions v. Pacific Synod*, 157 C 105, 106 P 395.

This membership concept applies to ministers; they are bound to “adhere to its discipline; conform to its doctrine and no other worship, and obey its laws and canons. If reason and conscience will not permit, the connection should be severed. *The only remedy* which the member of the voluntary association has, when he is dissatisfied with the proceedings of the body with which he is connected, *is to withdraw from it.*” (emphasis added) *Chase v. Cheny*, 58 Ill 523-4. Watson described it “a very important case.”

VI

Hinkle Was No Longer an Ordained Minister and Had No Authority.

Ministers are amenable to civil litigation. To be a minister requires “a prescribed course of study of religious principles, has been consecrated to the service of living and teaching that religion through an ordination ceremony of an established church by which he has been commissioned, and who is subject to the control and discipline of the church by which he was ordained” (emphasis added). *Buttecali v. United States*, 130 F2d 172.

Civil litigation involving pastors have included determining who was or should be the pastor. *Gonzalez and Serbian*, among others. Relief against ministers has been rendered in *Bouldin; Whipple; First Evangelical Lutheran Church of Los Angeles v. Dysinger*, 120 CA 139, 6 P2d 522; *Dyer v. Superior Court*, 94 CA 260, 271 P 113. Dyer withdrawn from the fellowship of the association of congregational churches, purported to organize a new superdenominational church, and conducted services for it in the original church's edifice (like respondents). The court held it had jurisdiction to determine as a fact the separation and Dyer had “by this action forsaken his pastorate and that the property of the church is under the control of the members who have remained loyal.”

In *United Methodist Church v. St. Louis Crossing Independent Methodist Church* (Ind. App.) 267 NE 2d 916, hereinafter *Crossing*, the pastor withdrew and the congregation (with him) sued to enjoin the parent church from control of the church property and devised a conveyance to a third party with a lease back for \$5 a year. Judgment for plaintiffs was reversed.

A pastor cannot obstruct state policy regarding corporate affairs. *Burnett v. Banks*, 130 CA2d 631, 279 P2d 579. A discharged lay minister refused to move from his parsonage and was evicted by process. *Simpson v. Wells Lamont Corp.*, 494 F2d 490.

VII

Civil Courts Have Always Taken Jurisdiction of Church Property Litigation.

This is so in all cases, state and federal. It could not be otherwise for then the separation of church and state would be destroyed and the ecclesiastical realm would appropriate civil jurisdiction.

VIII

Respondents' Self-Help Countenanced by the Trial Court and the Court of Appeal.

Hinkle and the other respondents resorted to *self-help* and misappropriated the church properties.

Not only is this abhorrent ethically and morally, in crass violation of all spiritual and ecclesiastical standards and in open breach of trust obligations, but otherwise legally impermissible.

Concern regarding self-help was stated by Justice Rehnquist in *Serbian*, 426 US 726.

It has been completely rejected in California. *Daluiso v. Boone*, 71 C2d 484, 78 CR 707.

IX

There Is Nothing Ecclesiastical About the Parsonage and the Contract Relating to It.

A parsonage is not a sacred building. It is real estate. *Everett v. First Presbyterian Church*, 32 A 747.

It has been the subject of numerous cases including *Baker; Everett; Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America*, 344 US 94, hereinafter *Kedroff*, and *Serbian*.

X

Church Property Cannot Be Diverted to a Different Use.

Respondents describe the Church as independent and associated.

Watson said, regarding independent and congregational and associated churches, ". . . in such a case, if the trust is confided to a religious congregation of the independent or congregational form of church government, it is not in the power of the majority of that congregation, however preponderant, by reason of a change of views on religious subjects, to carry the properties so confided to them to the support of a new and conflicting doctrine. A pious man building and dedicating a house of worship to the sole and exclusive use of those who believe in the doctrine of the Holy Trinity, and placing it under the control of the congregation which at the time holds the same belief, has a right to expect that the law will prevent that property from being used as a means of support and dissemination of the Unitarian doctrine, and as a place of Unitarian worship . . . It will be the duty of the court in such cases, when the doctrine to be taught or the form of worship to use is definitely and clearly laid down, to inquire whether the party accused of violating the trust is holding or teaching a different doctrine, or using a form of worship, which is so variant as to defeat the declared objects of the trust."

The property of a corporation chartered for Boy Scouts cannot be diverted to the Boys Club, Girl Scouts

or any other organization. *Fairmont Presbyterian Church, Inc. v. Presbytery of Holiness, etc.* (1975), 531 SW2d 301.

Dysinger, supra, involved a minister charged with insubordination, requested to resign, refused and he and his group held and claimed the property against the minority who adhered and then purported to amend the church constitution. The adherents recovered the church property and the court said "furthermore, the amendment, if regular, *operated to change a synod form of organization into a congregational form. That may not be done* by the church amending its constitution . . . The amendment attempted is void. *It is an effort to set up in this church a Presbyterial form to govern a congregational form of government.*"

Dissenters "had no right and no power to divert it to the use of another and different church organization." *Baker, supra*.

XI

Effect of Defrockment of Ministers.

Losing ordination and the authority inherent in it, a minister loses all rights as a minister, both ecclesiastical and civil. For instance, he can no longer preach and practice his former ordained ministry or perform ecclesiastical ceremonies or rituals. In California, for instance, marriages may be solemnized by ". . . any priest, minister or rabbi of *any religious denomination . . .*" CC 2205. A marriage performed by one who is not authorized to do so is *void*. *Estate of Abate*, 166 CA2d 282, 333 P2d 200.

XII

The Complaint Did Not Tender Any Ecclesiastical Issue.

The ecclesiastical subject arose between the Unity ecclesiastical authority and Hinkle. It determined Hinkle repeatedly violated the ecclesiastical authority, his ordination vows and ministry. That was an ecclesiastical determination. That ecclesiastical determination bound Hinkle, respondents and any court. All any court could do was to accept it as a fact and apply it to determination of the civil issue, i.e., property, as involved in this case.

The ecclesiastical proceedings' objective was accomplished by Hinkle's abandonment of his ordination and ministry; the ecclesiastical phase was then closed.

Hinkle and respondents remained in their secular status as trustees of the non-profit religious corporation and bound by the law of trusts. The same applies to the contract regarding the parsonage and all other temporalities and matters involved in the complaint.

XIII

This Is a Secular Action.

Its title and contents involved a non-profit, legal corporation, its trust status, its trust corpus, trustees, trust beneficiaries and the relief sought was totally secular. They make no ecclesiastical request.

No one can force anyone to believe in any way and there is no procedure therefor.

Respondents referred to its secular allegations and remedies. So did the Court of Appeal (incompletely and incorrectly) (Appendix D, p. 5).

XIV
California's Civil Jurisdiction.

State civil courts have original, constitutional and statutory jurisdiction over their animate and inanimate and material resources. It has not been delegated to the federal government to any extent by which the personal, civil and property rights can be encroached upon by religion and that encroachment approved by the federal government (in its 3 areas) under the guise of the First Amendment.

That would be the most extreme reverse discrimination and unconstitutional misapplication of the First Amendment since it would unilaterally open a gateway from the ecclesiastical to the civil side of the metaphoric wall.

The application of the First Amendment to the states did not destroy their sovereignty and jurisdiction and did not vest the church with any rights or powers except the right or power to practice its ecclesiastical doctrines within its ecclesiastical domains. The church cannot assume or appropriate any of the attributes of the state in any secular area. It certainly cannot do what a private person cannot do regarding secular matters under the guise of religion. It can commit neither a tort nor a crime. *Kedroff* held (headnote 6) that if subversive action, made punishable by the legislature, should actually be attempted by a cleric, *neither his robe nor his pulpit would be a defense*. It cannot expropriate California trusts and their trustees, beneficiaries and property from civil jurisdiction. It can sue and be sued on money, property, contract, personal and civil rights transactions.

Evans v. Abney, 396 US 435, illustrates the state's jurisdiction over its trusts. Senator Bacon conveyed land in trust for a public park for the "exclusive

use of the White people" of Macon, Georgia. The state Supreme Court held that discriminatory and impossible to accomplish and the trust terminated. This Court held that was a constitutional application of state trust law.

It cannot clothe its secular officers or trustees of its secular corporation with immunity from the secular trustee obligations, under the guise of religion.

It cannot insulate its secular corporation from the application of the California law which created it and by which it is regulated and bound.

No case has even intimated that that might be done in any circumstance. It is submitted that no court would have the proper authority to permit or tolerate it.

XV

The State Civil Courts' Awareness and Application of the First Amendment.

State courts have always been aware of and considered the First Amendment. In fact, the state constitutions contain similar provisions.

This is so in California, in its 1849 Constitution, Article 1, Section 4, and in its 1974 Constitution, Article 1, Section 4.¹⁰

Petitioners' point is that the California decisions in church property litigation correctly determined civil and not ecclesiastical issues and they are consistent with this Court's decisions in that field, including particularly *Watson*, *Hull* and *Serbian*.

¹⁰They are quoted in Appendix I.

XVI

The Opinion of the Court of Appeal.

It is factually and legally incorrect. Factually, it is contrary to the allegations of the complaint, which are deemed to be true on demurrer. It follows respondents' rhetoric and not the record.

The author of the opinion was not present on the oral argument. A concurring justice asked respondents whether a church property could be used for other purposes such as a place of entertainment. The response was no such use was involved in this case.

It affirms the trial court's decision that *Hull* disposes of this case. *That is obviously a landmark decision, however obscured in the semantics of the opinion which contains conclusionary statements without appropriate or adequate factual or legal background with which to apply its decision of the law.*

For instance, the allegations of the complaint, even in minimal substance, are not stated. The opinion is completely silent on the subject of trusts, the contract, the ecclesiastical proceedings which were initiated, Hinkle's and the respondents' conduct prior to, during and after said ecclesiastical proceedings; Hinkle's abandonment and withdrawal from his Unity ordination and Unity Ministry; respondents' purported change of the church organization and ministry (which cannot be done as noted *supra*, including *Watson*); the characteristics and applications of the ecclesiastical and civil jurisdictions.

It repeated respondents' argument that "this type of ecclesiastical dispute should be resolved within the church and not in civil courts."

It does not mention the ecclesiastical proceedings "within the church" obstructed by Hinkle. It misstates

the complaint by saying "appellants want the trial court to decide whether minister Hinkle and his followers had departed from the doctrine as previously preached by plaintiff Wilson and the Unity church."

Aside from all the record, there was not, is not, and could not be, any need for petitioners to do so, since it was an accomplished fact (not whether or not it had happened or would happen). As the opinion states, Hinkle and "his followers" had "departed from doctrine."

It is significant that Hinkle and respondents were not judged as trustees who breached their trust and *resorted to self-help*.

Also significant is the Court's silence on its own case of *Allard v. Church of Scientology of California*, 58 CA3d, 439, 129 CR 797, which petitioners cited, affirming a malicious prosecution judgment against the First Amendment argument of that church, including that the trial had become one "of determining the validity of religion rather than the commission of a tort;" the court said "any party whose *tenets* include lying and cheating in order to attack its 'enemies' deserves the results of the risk which such conduct entails."

It did not consider the duality of churches and their separate aspects of structure and jurisdiction. It quoted part of the *language* but did not consider the *law of Providence*, cited by petitioners (Appendix D, p. 10, fn. 5). The pastor had been discharged, refused to vacate or surrender documents and funds and the church and its trustees sued for declaratory relief. The court found for plaintiffs. The court, among other things, held that it had jurisdiction to decide *what* the church's "usages, customs, rules and regulations" were and whether they were followed and that "as

long as civil or property rights are involved, the courts will entertain jurisdiction of controversies in religious bodies although some ecclesiastical matters are incidentally involved."

Petitioners do not contend a different California constitutional standard (Appendix D, p. 8, fn. 3) but that it is legislatively and judicially sensitive to constitutional issues and maintains its own high standard in its own state jurisdiction.

It states out-of-state cases are not binding on the Court of Appeal (Appendix D, p. 8, fn. 3). Principles are not limited geographically. Such cases petitioners cited, as *Harmon*, *Chase*, *Fairmont* and *Whipple*, were all approved by this Court.

Petitioners cited *Kurkjian* not for the reason the opinion states (Appendix D, p. 9) but for the principle that officers of non-profit religious corporations are trustees.

XVII

This Is a Secular Case Determinable Secularly and by "Neutral Principles".

Pre-*Hull*, California courts applied "neutral principles." That phrase merely means, as a practical matter, the courts look at the secular record. That was done in *Baker*, among many other California cases.

There is really no need to apply the "neutral principles" suggested in *Hull*. The reason is that *Hinkle has established a separation and diversion from his said ministry and the Church*.

However, the said "neutral principles" also apply in this case. See *Md. and Va. Churches v. Sharpsburg Church*, 396 US 367 and *Crossing, supra*.

Their application would lead to the consideration of the California law of religious corporations, trusts,

fiduciary relations; inspection of the secular documents and records of the corporation and the secular history of the Church, its organization and its corporation, its association with Unity organizations and associations, their respective constitutions, by-laws, codes of ethics and *the usages, customs, rules, regulations of the said secular bodies*; *Hinkle's ordination and employment, secular position as officer of respondent corporations and of those of the other respondents, evidence of title to the church temporalities, the corporations' books and records including minute books, financial and property records; also Hinkle's circulated notices and public press announcements including his withdrawal from his Unity Ministry and "taking the Church out of Unity and Unity out of the Church" and all the secular, legal evidence of all respondents' acts and conduct alleged.*

None of those is ecclesiastical or requires ecclesiastical determination. *Hinkle took the case out of the ecclesiastical realm.*

XVIII

Consequences of the Opinion.

If the decision of the Court of Appeal stands, thereby judicially countenancing respondents' conduct, it will not only be contrary to all principles and decisional law, partially noted, but will not only permit but invite, any cleric (priest, minister, rabbi) who has a change of personal opinion, or a change of heart, mind, or soul, or becomes motivated by avarice and materialistic impulses, with or without his faction within the church or its secular corporation, to "steal" the church and its temporalities (as *Schnorr* said). It will permit and invite "acts of treason" within and *raids* from without, including by "newcomers" attracted by the exploitable temporalities. That applies to all churches and church

organizations and systems from the largest to the smallest. That exposure risk, of course, would be increased in proportion to the wealth of the temporalities.

In that last regard, although the principles involved are the same whether the church is a cathedral or a one room structure, the fact is that such a magnet is not only a fact of life but has been judicially recognized as such. *Huber v. Thorn* (1962 Kan) 371 P2d 140, 372 P2d 579. That court expressed regret over the schism, held the property belonged to the adherents and, with pragmatic insight, said, regarding the \$2,000,-000 property involved, "So that *the importance of this case is not to be gainsaid.*"

Would respondents have misappropriated the Church if it were a one room structure or insolvent?

Conclusion.

Petitioners respectfully pray, for the reasons stated above, that this petition be granted.

Respectfully submitted,

A. V. FALCONE,

Attorney for Petitioners.

APPENDIX A.

Minute Order.

Superior Court of California, County of Los Angeles.
Dept. 86.

Date: December 20, 1974.

Honorable: Jerry Pacht, Judge.

P. Hookstratter, Deputy Clerk.

Ernest Charles Wilson, et al. vs. John J. Hinkle,
et al. C 99458.

Counsel for Plaintiff: Falcone & Falcone.

Counsel for Defendant: Hill, Farrer & Burrill for
demurring defts.

NATURE OF PROCEEDINGS.

Demurrer of defendants John J. Hinkle, Frances
B. Devlin, Onnalee O. Doheny, Ennis McGinley,
Betty B. Letteau, Friedel A. Schramm Jensen,
Gerald A. Grimes, Christ Church Unity, and
Christ Unity Manor to complaint.

Motion of plaintiffs for leave to amend complaint
(submitted Dec. 19, 1974) (Typographical error)
The Demurrer of the defendants having been here-
tofore submitted on Dec. 19, 1974, the Court
now makes the following order:

Demurrer is sustained without leave to amend
on grounds specified in the moving papers.

Motion denied.

Order of Dismissal prepared.

Copies of Minute order mailed to respective coun-
sel on Dec. 23, 1974.

Demurring party to give notice.

APPENDIX B.

Order of Dismissal.

Superior Court of California, County of Los Angeles.

Ernest Charles Wilson, et al. Plaintiff(s) vs. John J. Hinkle Defendant(s). C 99458.

Filed: Dec. 23, 1974.

Good cause appearing therefor, the above entitled action is hereby dismissed under the provisions of Section 430 of the Code of Civil Procedure as to the complaint.

It is further ordered that defendants have and recover costs against the plaintiffs in the sum of \$.....

DATED: Dec. 23, 1974.

/s/ J. Pacht
Judge

APPENDIX C.

Minute Order.

Superior Court of California, County of Los Angeles.
Dept. 47.

Date: Jan. 13, 1975.

Honorable: Jerry Pacht, Judge.
B. Stephens, Deputy Sheriff.

A. Misko, Deputy Clerk.

Ernest Charles Wilson et al. vs. John J. Hinkle,
etc. et al.

Counsel for Plaintiff: Falcone & Falcone.

Counsel for Defendant: Hill, Farrar & Burrill.

NATURE OF PROCEEDINGS: Submitted Matter

In this matter submitted Jan. 10, 1975, the Court rules as follows. On the Court's own motion the orders of dismissal signed and filed on Dec. 20, and 23, 1974, are ordered vacated nunc pro tunc. Court grants plaintiff's motion for reconsideration of its ruling made Dec. 20, 1974, pursuant to which dismissals were signed and filed Dec. 20 and 23, 1974.

Upon reconsideration of the demurrer argued Feb. 10, 1974, the Court sustains moving defendants' demurrer to the complaint without leave to amend as to the following defendants: John J. Hinkle; Frances B. Devlin; Onnalee O. Doheny; Ennis McGinley; Betty B. Letteau; Friedel A. Schramm Jensen; Gerald A. Grimes; Christ Church, Unity and Christ Unity Manor.

The demurrer is sustained on the grounds urged for said general demurrer in defendants' moving papers. Special demurrer is off calendar.

Order of dismissal is signed and filed this date. Copies of this minute order are mailed to counsel today.

APPENDIX D.

Opinion of the Court of Appeal.

In the Court of Appeal of the State of California,
Second Appellate District, Division Two.

Ernest Charles Wilson, Violet Stewart Goetchius, Mary C. Williams and Robert B. Frost, Plaintiffs and Appellants, vs. John J. Hinkle, Frances B. Devlin, Onnalee O. Doheny, Ennis McGinley, Betty B. Letteau, Friedel A. Schramm Jensen, Gerald A. Grimes, Christ Church, Unity, a California non-profit corporation, and Christ Unity Manor, Defendants and Respondents. 2d Civil 46618 (L.A.S.C. No. C 99458).

FILED: Feb. 25, 1977.

APPEAL from an order of the Superior Court of Los Angeles County. Jerry Pacht, Judge. Affirmed.

Falcone and Falcone, by A. V. Falcone, for Plaintiffs and Appellants.

Hill, Farrer & Burrill, by William S. Scully, Jr., and Lynn E. Hall, for Defendants and Respondents.

Plaintiffs appeal from the order of dismissal following the trial court's sustaining of defendants' demurrer without leave to amend. A second appeal, from an order denying plaintiffs' motion to strike defendants' memorandum of costs, is consolidated with this appeal.

FACTS:

The essence of the lengthy complaint in the instant case is that plaintiffs (the former minister and certain members of the "Christ Church, Unity") are suing the present minister, several members, the church corporation, and others for return of the church¹ that

¹At this point the word "church" is used as appellants also use it in a general all-inclusive sense to mean the ideas of an association or a congregation for worship and religious purposes, the corporate entity by which the church's secular affairs are carried on, and the church properties including the building containing the sanctuary.

they allege has been taken from them. Plaintiffs allege that the present minister, defendant Hinkle, once subscribed to the theories of the Unity Movement but has experienced a "diversion" and now practices "charismatic." Although defendant Hinkle has been urged by the general church organization and some members to reconsider and either return to his Unity ministry or establish his own church, he allegedly has refused to do either. The complaint further alleges that defendant Hinkle and other defendants have continued to receive substantial donations directed to the Unity Church to be used in its Unity ministry but that said defendants have applied these contributions to the charismatic and other new activities of the new church.

The complaint states various damages allegedly sustained by plaintiffs. The prayer asks for certain declaratory relief in the form of several findings of facts, and also that defendants be ordered to deliver the property and assets of the church to plaintiff Wilson, the former minister of the Unity Church. The complaint further asks that title be quieted to all the properties and assets in the name of the church corporation for the benefit of the church and all its members.

Defendants demurred to the complaint on the grounds that (1) the court has no jurisdiction of the purported causes of action; (2) the pleading does not state facts sufficient to constitute causes of action; (3) plaintiffs lack standing to assert certain actions; and (4) the entire complaint and all causes of action are uncertain, including ambiguous and unintelligible.² The trial court

²There is a minute order dated December 20, 1974, indicating that the demurrer of defendants had been submitted and was sustained without leave to amend on grounds specified in the moving papers. Orders of dismissal were filed December 20 and December 23, 1974. An application by plaintiffs for an ex parte order not to enter the order of dismissal on the

(This footnote is continued on next page)

sustained the defendants' demurrer to the complaint without leave to amend "on the grounds urged for said general demurrer in defendants' moving papers." The special demurrer was put off calendar. The order of dismissal was signed January 13, 1975. Defendants' memorandum of costs was received by the clerk of Department 47 on January 23, 1975. The trial court denied plaintiffs' motion to strike defendants' memorandum of costs or in the alternative to stay all proceedings.

CONTENTIONS ON APPEAL:

1. The trial court erred in sustaining the demurrer.
2. Respondents' memorandum of costs was untimely filed and should have been stricken.

DISCUSSION:

1. *The trial court does not have jurisdiction over this dispute.*

One of the grounds for defendants' demurrer was that the court has no jurisdiction of the purported causes of action. Defendants argued that this type of ecclesiastical dispute should be resolved within the church and not in the civil courts. Guided by the United States Supreme Court decision in *Presbyterian Church v. Hull Church*, 393 U.S. 440, we agree.

Hull, supra, involved the withdrawal of two local Georgia churches from the general Presbyterian Church. The local churches claimed that the general church

sustaining of the demurrer in order to permit a motion to reconsider was denied by the trial court judge on December 26, 1974. However, plaintiffs filed another motion to reconsider defendants' demurrer to the complaint; on the court's own motion, the orders of dismissal signed and filed on December 20 and December 23 were ordered vacated *nunc pro tunc*. The court then granted plaintiffs' motion for reconsideration of the ruling made December 20. Upon reconsideration of the demurrer, the court then again sustained the defendants' demurrer as indicated above.

had departed from its original tenets and faith and practice for various reasons, including the ordaining of women as ministers and ruling elders; the making of pronouncements and recommendations concerning civil, economic, social, and political matters; giving support to the removal of bible reading and prayers by children in the public schools; and causing all members to remain in the National Council of Churches of Christ. (393 U.S. at p. 442.) In the instant case, plaintiffs claimed to be representatives of the general church from whose tenets the local church allegedly has withdrawn. The principles involved regarding the jurisdiction of civil courts to resolve these matters, however, remain the same. Appellants want the trial court to decide whether minister Hinkle and his followers have departed from the doctrine as previously preached by plaintiff Wilson and the Unity Church; in *Hull, supra*, Georgia law required the civil courts to determine this type of "departure-from-doctrine." According to *Hull, supra*, 393 U.S. at p. 442, a civil court may not apply the "departure-from-doctrine" standard.

"[T]he First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded. But First Amendment values are plainly jeopardized when church property litigation is made to turn on

the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern. Because of these hazards, the First Amendment enjoins the employment of organs of government for essentially religious purposes, *Abington School District v. Schempp*, 374 U.S. 203 (1963); the Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Hence, States, religious organizations, and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions." (393 U.S. at p. 449.)

Hull does permit limited court adjudication of rights involving church decisions. For example, civil courts can adjudicate whether a church decision has resulted from fraud, collusion, or arbitrariness. (393 U.S. at p. 451, approving *Gonzalez v. Archbishop*, 280 U.S. 1.) However, the "departure-from-doctrine" standard, as applied by the Georgia courts and as requested to be applied by appellants herein, has no place in the civil courts.⁸

The California cases cited by appellants are either inapposite or have been implicitly overruled by *Hill*,

⁸Appellants argue that California has applied different constitutional standards than the United States Supreme Court. (*People v. Brisendine*, 13 Cal.3d 528.) However, those standards can only be stricter and not more lenient than those imposed by the United States Supreme Court in interpreting Constitutional standards. Appellants herein argue for a standard that would be a less strict application of the First Amendment. That we cannot do.

supra, and *Serbian Eastern Orthodox Diocese v. Mili-vojevich*, 44 L.W. 4927 (decided June 21, 1976).⁴

St. James Armenian Church of Los Angeles v. Kurkjian, 47 Cal.App.3d 547, is not applicable. That case did involve church property; however, there was no dispute whatsoever regarding ecclesiastical doctrine. On the other hand, *In re Metropolitan Baptist Church of Richmond, Inc.*, 48 Cal.App.3d 850, involved acceptance by the court of jurisdiction over property disputes even though some ecclesiastical matters were incidentally involved. The church in that case was dissolving, and the issues concerned the distribution of the assets. The court observed that since the property of a charitable or religious non-profit corporation is held in trust to carry out the objects for which the organization was created and since California courts have accepted jurisdiction even where ecclesiastical questions may be indirectly involved when civil or property rights are involved (*Providence Baptist Church v. Superior Ct.*, 40 Cal.2d 55, 60; *Rosicrucian Fellow v. Rosicrucian etc. Ch.*, 39 Cal.2d 121, 131), a civil court could accept jurisdiction of the matter in that case. Respondent attempts to distinguish *In re Metropolitan Baptist Church of Richmond, Inc.*, *supra*, as involving application of the cy pres doctrine upon the dissolution of a small church rather than interference in any doctrinal dispute between factions of an on-going congregation. Perhaps the *dissolution* of a church does involve less state interference with religion; we need not decide that issue. However, we do note that the California Supreme Court cases cited in *In re Metropolitan Baptist Church of Richmond, Inc.*, *supra*, especially *Rosicrucian Fellow*, *supra*, 39 Cal.2d at p. 131—or at least some of the language therein—is governed and changed by

⁴The out-of-state cases cited by appellants are, of course, not binding on us.

Hull. (See also *Providence Baptist Church v. Superior Ct., supra*, 40 Cal.2d at p. 63.)⁵

Because of our resolution of the issue of jurisdiction, we need not discuss whether the demurrer was properly sustained on other grounds as well.

2. *The trial court did not err in failing to strike respondents' memorandum of costs.*

Section 1033 of the Code of Civil Procedure provides in part that "the party in whose favor the judgment is ordered, and who claims his costs, must serve upon the adverse party, and file at any time after the verdict or decision of the court, and not later than 10 days after the entry of the judgment, a memorandum of the items of his costs and necessary disbursements in the action or proceeding . . ." (Emphasis added.) Appellants claim that respondents' memorandum was not filed within 10 days after the entry of the judgment. The requirement that the cost bill be filed within 10 days is not jurisdictional. (See *Davis Lumber Co. v. Hubbell*, 137 Cal.App.2d 143, 151, which deals with the earlier version of section 1033 that allowed only five days for filing. Cf. *Oppenheimer v. Ashburn*, 173 Cal.App.2d 624, 634-635.) "In the absence of prejudice, the trial court has broad discretion in allow-

⁵*Providence Baptist Church, supra*, 40 Cal.2d at p. 64, holds that where the question presented is whether the property and funds of the church are being handled in accordance with the bylaws and rules of the church corporation, those aggrieved may seek redress through court action. The court specifically states, however, "If the problem was whether the pastor was preaching a theology contrary to the denominational doctrine or conducting religious services in a manner out of harmony with the ritual of the church, it would clearly not be within the providence of a court to interfere, and the controversy would have to be settled by the church tribunals. . ." (40 Cal.2d at p. 63.) We are faced with that situation in the instant case. Therefore, even under the California law cited by appellants, the court does not have jurisdiction over these issues.

ing relief on grounds of inadvertence from a failure to timely file a cost bill. [Citations.]" (*Pollard v. Saxe & Yolles Dev. Co.*, 12 Cal.3d 374, 381.) Given the confused procedural circumstances following the initial orders of dismissal and appellants' own attempts to secure a reconsideration of the sustaining of the demurrers, the trial court herein did nothing more than exercise its discretion in allowing relief upon good cause from a failure to timely file the cost bill.⁶ The trial court ordered the vacation of the December 20 and December 23 orders on January 13, 1975. On that date, the court also sustained the demurrer and ordered dismissal of the case. Therefore, any delay until January 23, 1975, is completely reasonable.⁷ Although respondents' cost bill is stamped filed on January 30, 1975, the record contains declarations by counsel for respondents stating that she received the return of her directions regarding the memorandum of costs "with a notation thereon that the Memorandum had been received on January 23, 1975, by [the] . . . Clerk of Department 47." Therefore, even if

⁶This determination rests on the assumption that the cost bill was in fact untimely filed. The original orders of dismissal were filed, though not entered from what we can tell, on December 20 and December 23. The trial court technically should not have vacated those orders *nunc pro tunc* in order to deal with plaintiffs' motion for reconsideration. Such an order should not be made for the purpose of declaring that something was done which was not done at the time. "Its only office is to cause the record to show something done which was actually done, but which, by misprision or neglect, was not at the time entered in the record." [Citation.]" (*City of Los Angeles v. Superior Court*, 264 Cal.App.2d 766, 771.)

⁷At the hearing on January 10, 1975, the trial court judge personally took responsibility for the "snarl up" in the proceedings. He stated that even on that date, no order of dismissal had been entered. Since section 1033 of the Code of Civil Procedure refers to "10 days after the *entry* of the judgment" (emphasis added), it can be argued that respondents were not dilatory in failing to file before the entry of the final order of dismissal.

the Memorandum of Costs was not stamped filed by the County Clerk until January 30, 1975, the trial court did not abuse its discretion in refusing to strike the Memorandum of Costs.

The order dismissing the complaint after sustaining of the demurrers and the order denying the motion to strike the Memorandum of Costs are both affirmed.

CERTIFIED FOR PUBLICATION.

Beach, J.

We concur:

Fleming, Acting P. J.

Compton, J.

APPENDIX E.

Court of Appeal, Second Appellate District.
Minutes for March 22, 1977.

Division Two.

Wilson, et al vs. Hinkle, et al, 2nd Civil 46618-46619.

THE COURT: PETITION FOR REHEARING DENIED.

CLAY ROBBINS, JR., Clerk of the Court of Appeal, Second Appellate District, State of California, do hereby certify that the preceding is a true and correct copy of an order of this Court, as shown by the record of my office.

Witness my hand and the seal of this Court this 14th day of July, A.D., 1977.

CLAY ROBBINS, JR. Clerk
By
Deputy Clerk

[Seal]

APPENDIX F.

Order Denying Hearing after Judgment by the Court of Appeal, 2nd District, Division 2, Civil No. 46618, 46619.

In the Supreme Court of the State of California in bank.

Wilson et al. v. Hinkle et al.

Filed: Apr. 21, 1977.

Appellants' petition for hearing DENIED.

BIRD, *Chief Justice*

APPENDIX G.

In the Court of Appeal, Second Appellate District, State of California.

Ernest Charles Wilson, et al., Plaintiffs and Appellants, vs. John J. Hinkle, et al., Defendants and Respondents. No. 46618, 46619, S.C. No. C 99458.

Remittitur on Appeal from the Superior Court in and for the County of Los Angeles.

The above-entitled cause having been fully argued, submitted and taken under advisement, IT IS ORDERED, ADJUDGED AND DECREED by the Court that the order dismissing the complaint after Sustaining of the demurrers and the order denying the motion to strike the Memorandum of Costs are both affirmed.

COSTS TO RESPONDENTS.

I, CLAY ROBBINS, JR., Clerk of the Court of Appeal, Second Appellate District, State of California, do hereby certify that the foregoing is a true copy of an original judgment entered on February 25, 1977, and now remaining of record in my office.

Dated:

CLAY ROBBINS, JR., Clerk
By (Illegible), Deputy

[Seal]

APPENDIX H.

**The Substance of the Involved California
Rules on Appeal.**

By Rule 24(a) said decision became final as to the Court of Appeal 30 days after filing, i.e., March 27. Rule 27(a) provides for a rehearing; 27(b) requires a petition therefor to be filed within 15 days after the decision was filed, i.e., March 12, a Saturday, and therefore the next secular day, March 14 (*CCP 12a*). Rule 28(a) provides for a discretionary hearing by the California Supreme Court within 30 days after the decision becomes final as to the Court of Appeal, i.e., 60 days after it is filed, i.e., April 26; 28(b) requires a petition for hearing to be filed within 10 days after the decision becomes final as to the Court of Appeal, i.e., within 40 days after the decision is filed, i.e., April 6, 1977.

APPENDIX I.

United States Constitution, Religion Clauses:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .”

**United States Constitution, Fourteenth Amendment,
Relevant Portion:**

“. . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws . . .”

APPENDIX J.

1849, California Constitution, Article 1, Section 4:

"The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be guaranteed in this State; and no person shall be rendered incompetent to be a witness or juror on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State."

1974, California Constitution, Article 1, Section 4:

"Free exercise and enjoyment of religion without discrimination or preference are guaranteed. This liberty of conscience does not excuse acts that are licentious or inconsistent with the peace or safety of the State. The Legislature shall make no law respecting an establishment of religion."

APPENDIX K.

Summary of the Pleadings and Subject Dismissal Order.

The complaint followed the California standard for such pleading in cases involving non-profit, religious corporations, in which the sufficiency of the pleadings were directly involved. These include *Baker*; *Bomar v. Mt. Olive Missionary Baptist Church*, 92 CA 618, 268 P 665; *Holt*; *Hooper v. Stone*, 54 CA 668, 202 P 485; *Law v. Crist*, 41 CA2d 862, 107 P2d 953. And as to the pleading of many complicated transactions (constituting only one cause of action), generally, *San Pedro Lumber Co. v. Reynolds*, 111 C 588, 44 P2d 309; *Kritzer v. Lancaster*, 96 CA2d 1, 214 P2d 407; *Brea v. McGlashan*, 3 CA2d 454, 39 P2d 677. Also the following cases in other jurisdictions: *Schnoor* (considered a leading case, see Carl Zollman, *American Civil Church Law* (cited in *Kedroff* and *Rosecrucian*)); *Bouldin* and *Brundage v. Deardorf*, 55 F 839 (both cited in *Hull*) and *Watson*, cited approvingly in *Hull* and *Serbian*.

Demurrs were overruled in the lower courts and affirmed on appeal in *Baker*, *Hooper* and *Law*; also *Bouldin*, *Brundage* and *Gonzalez*. Demurrs were sustained in the lower courts but reversed on appeal in *Wheelock* and *Holt*.

It is held an abuse of discretion to sustain a general demurrer (other than for a patent lack of jurisdiction) without leave. It is settled that a general demurrer must not be sustained if the pleading states facts from which *any* liability results, although for some but not for all relief sought and recovery can be on *any* theory. *Lord v. Garland*, 27 C2d 840, 168 P2d 5. All pleadings must be liberally and reasonably interpreted and read

as a whole. *Hudson v. Craft*, 33 C2d 654, 204 P2d 1; CCP 452.

All the cases cited in petitioners' briefs, including *Hull* and *Serbian*, were tried on their merits and not on demurrer.

Among the remedies sought by the complaint was declaratory judgment (see Appendix D, p. 5). Such actions should be disposed of on their merits and not by demurrer. *Ramos v. Cypher*, 137 CA2d 648, 290 P2d 586.

The second general ground of respondents' demurrer was that the court allegedly had "no jurisdiction of the causes of action for *diversion from trust purposes, breach of trust, breach of contract and conspiracy to appropriate and divert property from church trust purposes*" (emphasis added) (TR. CT 110, lines 1-6). That is an unavoidable acknowledgment of the secular nature of the complaint.

As noted, there was *not* an ecclesiastical issue alleged in the complaint or requested by it for determination.

The next general demurrer was that allegedly no cause of action was stated for recovery of the parsonage for lack of consideration. The contract stated consideration; this was an admission. Written contracts presume consideration. CC 1614. Want or failure of consideration is a defense and not reachable by demurrer.

The next general demurrer was that petitioners allegedly had no standing to sue.

Every member is a proper plaintiff to enforce the trust. Rosicrucian; also Baker, Law and Wheelock.

One loyal member, adhering to church trust property can maintain the action. The cases *supra* and *Protestant*

Reformed Church v. Templeman, 249 Minn 182, 31 NW2d 839.

Petitioners were proper parties plaintiff. *Watson*.

Respondents are proper parties defendant. *Watson; Law; Rosicrucian; Whipple*.

The special demurrer was for alleged uncertainty, i.e., that respondents allegedly did not understand from the complaint the issues they were to meet. This is all that was required of the complaint. *Lord; Hudson; Kritzer*.

Respondents meticulously analyzed the complaint, clearly showing their understanding of it, but argued the facts, whereas legal and not factual issues are raised by demurrer. Further, such demurrs do not lie if the matters alleged are within respondents' knowledge. They were allegations of *their* acts and conduct. The trial court's Policy re Law and Motion, par. 21c, states such demurrs are disfavored and strictly construed and not applicable if respondents have knowledge of the facts alleged.

Petitioners' opposition to the demurrer was unavoidably filed the day before the hearing. It is commonplace in even stereotyped cases to continue the hearing to permit court and counsel to study the law presented by both sides. The court first continued the hearing but on respondents' insistence heard it. The court did not read all the opposition even after he ordered dismissal. Petitioners requested the court not to file the dismissal order so they could file their motion to reconsider, since said motion must be made before the dismissal is filed. *Berri v. Superior Court*, 43 C2d 856, 279 P2d 8. Once the dismissal is *filed* the court loses jurisdiction and review is only by appeal. The opinions fn. 3 (Appendix D, p. 8) states the *entry* of the dismissal order. That is incorrect. CCP 581d

provides "and such orders when so *filed* shall constitute judgments and be effective for *all* purposes." (emphasis added) The court denied the stay on the ground the dismissal had been filed. It even denied Amendment of *two words* for that reason. Reassured by the judge's clerk and by the register of actions that it had not been filed, the motion to reconsider was made. Before it was heard not only the first order but a second dismissal order was signed and filed by the judge. On the hearing of the motion, petitioners contended that if the dismissal had actually been filed prior to the motion the court had no jurisdiction to hear it. Even on that date the court had not read all the opposition. It nevertheless purported to hear the motion although the 2 orders of dismissal had been filed about 1 month before and purported to vacate those dismissals *nunc pro tunc*. It then made the *third* dismissal order. (Appendices A, B, C) It had no jurisdiction to do so. Irregular proceedings were involved as to dating the first order. See TR, CT 352. The opinion's disposition of the second appeal which involved that point avoided that record and the legal consequences of it.

Although the first order of dismissal also sustained the special demurrer, the third order did not do so, the judge stating that he had not sustained a special demurrer in 3 years. See TR. OB 48-52; Appendix C.

Although the court had not read all the opposition, it stated, "This is a large lawsuit, a lot of work has been done on it, and you are entitled to a mature consideration of the real problems" (TR. OB 50-1, RT 2, lines 20-22). The Court of Appeal considered the special demurrer not sustained but off-calendared. *Actions are not dismissed on special demurrers in any event.*

Supreme Court, U. S.

E I L E D

SEP 6 1977

M. ODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1977

No. 77-109

ERNEST CHARLES WILSON, VIOLET STEWART GOETCHIUS, MARY C. WILLIAMS and ROBERT B. FROST,
Petitioners,

vs.

JOHN J. HINKLE, FRANCES B. DEVLIN, ONNALEE O. DOHENY, ENNIS McGINLEY, BETTY B. LETTEAU, FRIEDEL A. SCHRAMM JENSEN, GERALD A. GRIMES, CHRIST CHURCH, UNITY, a California non-profit corporation, and CHRIST UNITY MANOR, a California non-profit corporation,

Respondents.

On Petition for Writ of Certiorari to the Court of Appeal,
Second Appellate District, State of California, Division Two.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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IN THE
Supreme Court of the United States

October Term, 1977
No. 77-109

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vs.

JOHN J. HINKLE, FRANCES B. DEVLIN, ONNALEE O. DOHENY, ENNIS McGINLEY, BETTY B. LETTEAU, FRIEDEL A. SCHRAMM JENSEN, GERALD A. GRIMES, CHRIST CHURCH, UNITY, a California non-profit corporation, and CHRIST UNITY MANOR, a California non-profit corporation,

Respondents.

**On Petition for Writ of Certiorari to the Court of Appeal,
Second Appellate District, State of California, Division Two.**

BRIEF FOR RESPONDENTS IN OPPOSITION.

Opinion Below.

The Opinion delivered in the California Court of Appeal, Second Appellate District, State of California, Division Two, is reported at 67 Cal.App.3d 506, 136 Cal.Rptr. 731. A copy of the Opinion is attached to the Petition herein as Appendix "D".

Jurisdiction.

Respondents do not question the jurisdiction as set forth in the Petition.

Questions Presented for Review.

The Petitioners herein misstate the question presented by this case. The question presented is as follows:

Whether a civil court can take jurisdiction over the instant dispute, involving claims that respondents, the ministers and specified members of Christ Church, Unity, are liable for breach of trust and breach of contract due to an alleged diversion of the Church from the practices of the "Unity" movement to "charismatic" practices.

Constitutional Provisions Involved.

Respondents do not question the constitutional provisions involved as set forth by Petitioners.

Statement of the Case.

Petitioners' primary statement of the case appears to have been set forth under "Brief Summary of the Case", a subsection of "Questions Presented" in the Petition for Writ of Certiorari. A statement of the case is set forth herein because of certain inaccuracies and misleading statements in the summary of the case in the Petition for Writ of Certiorari.

The facts which are the subject of the instant controversy and the proceedings to date can be briefly summarized. Petitioners herein are Ernest Charles Wilson, who served as minister of respondent Christ Church, Unity from 1938 to 1965, and three Church members, one of whom, Goetchius, was alleged to be a General Member and member of the Board of Trustees. (Miss Goetchius died on June 9, 1977.) Respondents are the Church, Reverend Hinkle (the present Minister), certain members of the present Board of Trustees, the present Assistant Minister, two members

who signed the Articles of Incorporation of respondent Christ Unity Manor, a non-profit corporation providing housing for the elderly, and the Christ Unity Manor Corporation.

Petitioners alleged in paragraph 15 of their Complaint that respondent Christ Church, Unity had acquired funds and property for use in "the Church's Unity ministry" and that said contributions were accepted by the Church in trust for said purposes. [CTP 11.]¹

In paragraph 39 of the Complaint, Petitioners alleged various practices by the Church and Respondent Hinkle, its current Minister, purportedly constituting diversion of Church property from trust purposes (*i.e.*, the Unity ministry) and resulting in breaches of trust. Thus, it was claimed that respondent Hinkle engaged in "the charismatic movement" [CTP 18-21] preaching Evangelistic, Pentecostal and Fundamentalist beliefs and practices [CTP 17]; that Christ Church, Unity was no longer used as a Unity Church [CTP 18]; that respondents were not practicing and teaching "Unity" in the Church but were teaching "charismatic" [CTP 19]; that Hinkle had conducted faith healings in the Church accompanied by "speaking in loud voices", "talking in tongues", and "placing on hands", all taking place on Church property [CTP 21]; that the respondents had brought "charismatic literature" into the Church [CTP 22] and had built a housing facility for the elderly in conjunction with the Church [CTP 22-24] all allegedly contrary to a Unity ministry. Furthermore, petitioners purported to state causes of action for con-

¹The Clerk's Transcript of the Appeal from the decision of the Honorable Jerry Pacht, Judge, Superior Court, Los Angeles County, included in the certified record on appeal, is cited "CTP".

Respondents demurred on various grounds, primarily relying on the Court's lack of jurisdiction, pursuant to the First Amendment of the Constitution. The Court sustained respondents' Demurrer without leave to amend on the grounds stated in the moving papers, and the petitioners' action was accordingly dismissed. On appeal, the Court of Appeal upheld the order of the court sustaining the Demurrer and dismissing the Complaint, basing its decision on the jurisdictional grounds of demurrer. The California Supreme Court thereafter denied the petitioners' Petition for Certiorari.

When Federal Question Was Raised.

Respondents concur that the issue was raised at the first stage of the action by respondents' demurrer to petitioners' complaint. However, the grounds of the demurrer are misstated in the petitioners' Petition for Writ of Certiorari. The actual grounds of the demurrer (insofar as the grounds were Constitutional) were that the court did not have jurisdiction as the action sought to obtain an award of church property based on a "departure from doctrine" argument, which would require the court to determine whether defendants had departed from traditional "Unity" ministry, and thus to make determinations as to the interpretation of church doctrines and importance of those doctrines to the religion and to award church property on the basis of the interpretation and significance the court assigned to aspects of the doctrine.

—4—

spiracy to divert the Church, the Church corporation and Church property based on the above stated allegations and on allegations of paragraph 38 of the Complaint [CTP 18] that Hinkle and respondents Devlin, Doheny and McGinley (present members of the Board of Trustees of the Church corporation) conspired to appropriate and control the Church and its Board and property, and in pursuance of said conspiracy carried forward the various acts alleged in paragraph 39.

Petitioners also apparently claimed breach of contract, alleging that petitioner Wilson requested respondent Hinkle to continue the Unity ministry in the said Church, to adhere to the Unity movement, and to apply all receipts and acquisitions to a Unity ministry, and that defendant Hinkle accepted said request. [CTP 13.] Thereafter, according to the Complaint at paragraph 33, Hinkle "diverted from . . . said Unity ministry in the Church and commenced, and has continued ever since a different ministry of his own concept and choice, contrary to Unity. . . ." [CTP 16.] Pursuant to this alleged "new career", respondent Hinkle allegedly was involved in the various "charismatic" activities listed hereinabove.

Recovery by petitioners, whether pursuant to a trust or contract theory, thus appears to be premised on allegations that respondent Hinkle's present ministry is not a Unity ministry and does not adhere to Unity practice. By way of relief, the petitioners seek to "recover the Church", to dismiss its present ministers and officers, to themselves elect new officers and to recover damages and exemplary damages. [CTP 41-42.]

REASONS FOR DENYING THE WRIT.

I

The Decision Below Is in Accord With Applicable Decisions of the United States Supreme Court.

The California Court of Appeal in its decision filed February 25, 1977 properly held that civil courts do not have jurisdiction over the instant dispute. The Court relied primarily on the United States Supreme Court decision in *Presbyterian Church of the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, et al.*, 393 U.S. 440; 21 L.Ed.2d 658, 89 S.Ct. 601 (1969).

In *Hull*, two local Presbyterian churches had voted to withdraw from the Presbyterian Church of the United States in the belief that certain actions and pronouncements of the general church were violations of that organization's constitution and departures from the doctrine and practices in force at the time of the affiliation of the local churches with the general church. In particular, the local churches objected to the ordaining of women as ministers and ruling elders, the making of pronouncements and recommendations concerning civil, economic, social and political matters, giving support to the removal of bible reading and prayers by children in public schools, and causing members to remain in the National Council of Churches of Christ. (393 U.S. 442, 21 L.Ed.2d 661.)

The two local churches renounced the general church's jurisdiction and authority. In response, the general church, which was hierarchical in structure, proceeded to take over the local churches' property on behalf of the general church.

The local churches then filed suit to enjoin the general church from trespassing on the disputed property. The case was submitted to the jury on the theory that Georgia law implies a trust of local church properties for the benefit of a general church on the sole condition that the general church adhere to the tenets of faith and practice existing at the time of affiliation by local churches. The jury was instructed to determine whether the actions of the general church amounted to an abandonment of original tenets and doctrines. After the jury returned a verdict for the local churches, the Supreme Court of Georgia affirmed, and the United States Supreme Court granted certiorari.

As stated by Justice Brennan, the case presented the question whether:

"The restraints of the First Amendment, as applied to the states through the Fourteenth Amendment, permit a civil court to award church property on the basis of the interpretation and significance the civil court assigns to aspects of church doctrine." 393 U.S. at 441; 21 L.Ed.2d at 661.

The Court reviewed various prior decisions regarding Court review of ecclesiastical determinations and concluded as follows:

"First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular

interests in matters of purely ecclesiastical concern." 393 U.S. at 449; 21 L.Ed.2d at 665.

The Court held that the Georgia courts had violated the First Amendment as:

"The departure-from-doctrine element of the implied trust theory which they applied requires the civil judiciary to determine whether actions of the general church constituted such a 'substantial departure' from the tenets of faith and practice existing at the time of the local churches' affiliation that the trust in favor of the general church must be declared to have terminated. This determination has two parts. The civil court must first decide whether the challenged actions of the general church depart substantially from prior doctrine. In reaching such a decision, the court must of necessity make its own interpretation of the meaning of church doctrine. If the court should decide that a substantial departure has occurred, it must then go on to determine whether the issue on which the general church has departed holds a place of such importance in the traditional theology as to require that the trust be terminated. A civil court can make this determination only after assessing the relative significance to the religion of the tenets from which the departure was found. Thus, the departure-from-doctrine element of the Georgia implied trust theory requires the civil court to determine matters at the very core of a religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion. Plainly, the First Amendment forbids civil courts to play such a role." 393 U.S. at 450; 21 L.Ed.2d at 666.

The instant case as pled presented a clear attempt to obtain church property based on just such a "departure-from-doctrine" argument. Thus, petitioners pled breach of trust and diversion of trust assets and conspiracy to divert trust assets based on allegations that the respondent church and its minister had departed from teachings and practices of the "Unity" School. Likewise, petitioners claimed breach of contract on grounds that respondent Hinkle had departed from the "Unity" ministry.

If a civil court were to decide said issues, it would of necessity have to make its own interpretation as to what is "Unity" doctrine. It would furthermore have to decide whether the alleged "charismatic practices" were so foreign to the traditional Unity church theology as to require a finding of diversion of trust assets, breach of trust, or breach of contract. These decisions are precisely of the sort which are strictly forbidden under the *Hull* decision, as they are determinations as to "the interpretation of particular church doctrines and the importance of those doctrines to the religion" and as they seek "to award church property on the basis of the interpretation and significance the civil court assigns to the aspects of church doctrine." See 393 U.S. at 441 and 450; 21 L.Ed.2d at 661 and 666.

The United States Supreme Court reaffirmed its position in the recent case of *Serbian Eastern Orthodox Diocese for the United States of America and Canada, et al. v. Dionisije Milivojevich, et al.*, 426 U.S. 696, 49 L.Ed.2d 151; 96 S.Ct. 2372 (1976). The case involved a protracted dispute over the control of the Serbian Eastern Orthodox Diocese for the United States and Canada, during which dispute the Holy Assembly

of Bishops and the Holy Synod of the Serbian Orthodox Church (the Mother Church) suspended and ultimately removed and defrocked the Bishop of the Diocese, respondent Dionisije Milivojevich, and appointed another Administrator of the Diocese.

Dionisije Milivojevich filed suit in the Illinois courts, seeking to enjoin the Serbian Eastern Orthodox Diocese for the United States from interfering with the assets of Illinois church corporations and to have himself declared the true Diocesan bishop.

The United States Supreme Court, per Mr. Justice Brennan, stated as follows:

"Resolution of the religious disputes at issue here affects the control of church property in addition to the structure and administration of the American-Canadian Diocese. That is because the Diocesan Bishop controls respondent Monastery of St. Sava and is the principal officer of respondent property holding corporations. Resolution of the religious dispute over Dionisije's defrockment therefore determines control of the property. Thus, this case essentially involves not a church property dispute but a religious dispute the resolution of which under our cases is for ecclesiastical and not civil tribunals. Even when rival church factions seek resolution of a church property dispute in the civil courts there is substantial danger that the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs. Because of this danger, 'the First Amendment severely circumscribes the role that civil

courts may play in resolving church property disputes.' *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449 (1969)."

Thus, in the *Serbian Eastern Orthodox* case, the Supreme Court reaffirmed that secular courts cannot interfere in litigation where relief, even relief as to property, turns on the resolution of controversies regarding religious doctrine and practice. The instant case turns on just such a controversy over alleged "charismatic" doctrine and practices at Christ Church, Unity. Accordingly, it is clear that no secular court can have jurisdiction over the action.

II

The Decision Below Is Clearly Correct.

As shown *supra*, the decision of the California Court of Appeal, Second Appellate District is in accord with the United States Supreme Court decisions in *Presbyterian Church of the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, et al.*, 393 U.S. 440, 21 L.Ed.2d 658, 89 S.Ct. 601 (1969) and *Serbian Eastern Orthodox Diocese for the United States of America and Canada, et al. v. Dionisije Milivojevich, et al.*, 426 U.S. 696, 49 L.Ed.2d 151, 96 S.Ct. 2372 (1976).

The decision therefore is clearly correct.

If the California Court of Appeal had held otherwise, the determination of this lawsuit by a civil court would have required the court to examine in detail the present teachings and practices at Christ Church, Unity, to study the so-called "traditional" Unity doctrine, and to determine whether the practices of Reverend Hinkle were so different from the traditional Unity practice as to constitute a breach of trust or contract.

This determination would of necessity require improper and unconstitutional court interference in religion, by awarding property based on religious doctrine and by intervention on behalf of one group over another based on its religious beliefs.

Conclusion.

It is respectfully submitted that petitioners have wholly failed to sustain their burden of establishing under Rule 19 that there are special and important reasons why the Writ should be granted. As shown hereinabove, the decision of the California Court of Appeal involves a question of federal law which has been settled by the United States Supreme Court, and the decision of the California Court of Appeal—is in accord with prior decisions of the United States Supreme Court, and is clearly correct.

Respectfully submitted,

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Supreme Court, U. S.
FILED

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IN THE

Supreme Court of the United States

October Term, 1977

No. 77-109

ERNEST CHARLES WILSON, VIOLET STEWART GOETCH-
IUS, MARY C. WILLIAMS and ROBERT B. FROST,

Petitioners,

vs.

JOHN J. HINKLE, FRANCES B. DEVLIN, ONNALEE O.
DOHENY, ENNIS McGINLEY, BETTY B. LETTEAU,
FRIEDEL A. SCHRAMM JENSEN, GERALD A. GRIMES,
CHRIST CHURCH, UNITY, a California non-profit cor-
poration, and CHRIST UNITY MANOR, a California
non-profit corporation,

Respondents.

**Petitioners' Brief in Reply to Opposition to
Petition for Writ of Certiorari.**

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IN THE
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Respondents.

**Petitioners' Brief in Reply to Opposition to
Petition for Writ of Certiorari.**

PREFACE.

Petitioners are mindful of this Court's *Rule 24(4)* and this Reply Brief is addressed to the arguments first raised (expressly and impliedly) in respondents' opposition (hereinafter Opp.) to the Petition.¹

¹The Opp. was received by petitioners' attorney's office on September 7, 1977, while he was engaged then and on September 12 and 13 in other litigation; September 9 was a California legal holiday followed by the weekend without available secretarial and printing facilities. This brief was prepared immediately thereafter.

(The abbreviated references to the record, listed in the Petition (pp. 3-4, fn 2) will be followed. References to the Opp. pages will be by numbers in parentheses.)

Respondents continue their so-far successful tactic of misstating the record and distorting the perspective of the really simple issue (2-5) including the facts alleged in the complaint. Those facts are not arguable; they are admitted as true on demurrer, as a matter of law (Pet. 4). They are explicit and clear.

I
The Opposition.

1. Its "Questions Presented for Review" (2).

The statement of the alleged question presented (2) is incorrect and contrived to rationalize respondents' position. The involved breach of trust and breach of contract did not consist of Hinkle's and the other respondents' personal departure from doctrine, i.e., their diversion (change) of belief but upon their misappropriation, as trustees, of secular trust property and their misapplication thereof to a use other than its trust use. *The diversion referred to is not the diversion in belief but the diversion of property; that diversion is not ecclesiastical but secular.*

Respondents had the *absolute* right to change their beliefs but they related *duty* to *leave*. As trustees, if they could not, or would not, continue to discharge their voluntarily accepted trusteeship, they had only one choice, i.e., to properly withdraw (resign) from it.

2. Its "Statement of the Case".

Respondents' said tactic includes their *ipse dixit* (2), without record references, attributing "certain inaccuracies and misleading statements in the summary of the case" in the Pet.

That is untrue. Such technique is illogical and unworthy of this case. It makes specific response difficult *other than to refer to the record itself and to state that the Petition correctly states it.*

Respondents then deliberately misstate the record (2) particularly the complaint. For instance (2), that Wilson served from 1938 to 1965 implying he is no longer the founder-permanent minister on leave with the *contractual right to return at any time and resume his permanent ministry* (complaint 25); that Goetchius is "alleged" to be a general member and a member of the board (at the time the complaint was filed and until June 9, 1977); they refer to Hinkle as the "present minister" whereas he abandoned his ministry; a defrocked minister or one who has withdrawn and abandoned his ordination is no longer a minister. There is neither in ecclesiastical history nor in the civil law any authority for self-anointment, self-appointment or self-ordination. Ordination must come from established authority.² Petitioners correctly allege respondents' status; respondent corporations, the Church Corporation, Christ Church Unity, hereinafter Corporation and Christ Unity Manor, hereinafter Manor, are interlocked in officers and the latter's temporalities are owned by the Church Corporation since the Church's trust assets and credit were utilized to acquire the manor. Respondents refer (3) to complaint 15 which alleges the properties were acquired in trust for the Church's Unity Ministry; this is not only the *fact* but is the California *law. Metropolitan Baptist Church of Richmond, Inc. v. Younger*, 48 CA3d 850, 121 CR 899; Pet. 16. Respondents then refer (3-4) to complaint 38 and 39. 38 alleges the *conspiracy between Hinkle and the other respondents to consummate Hinkle's plan of abandoning his Unity Ministry and*

²*Buttecali v. United States*, 130 F.2d 172; Pet. 19.

withdrawing as such to engage in his new activities and appropriating the Church and all its properties and to use them not for their trust purposes but to further and finance his new activities with an entirely different discipline of his own choosing. Complaint 39 (21 subparagraphs) and 40, 49 through 52, 54, 55, 57, 64 through 66, 68 through 70, allege the secular acts regarding the secular trust property in consummation of the conspiracy, only partially stated by respondents, including Hinkle's and respondents' misappropriation of the trust properties from the United Ministry into said different use.

The complaint allegations regarding Hinkle's and respondents' acts in consummation of said conspiracy are also explanatory and historical, the complaint stating fully the case background, Hinkle's violation of his ordination and employment, in concert with respondents, which led to the protests and complaints culminating in the ecclesiastical disciplinary proceedings.

The Petition (5-9) states a brief summary of the case squarely based upon the allegations of the complaint.

Respondents then state (4) petitioners "apparently claimed breach of contract," i.e., Hinkle's violation of the terms and conditions of his temporary employment during Wilson's leave of absence. First, there is nothing "apparently" about it; it was unequivocally alleged; second, the contract was evidenced in writing, also executed by Hinkle, Exhibit A of the complaint. *There is nothing ecclesiastical about that.*

Contracts by ministers and by trustees are binding as on any other lay person. *There is nothing ecclesiastical about violation of a contract whatever its object, or whether or not the services relate to ecclesiastical matters.*

Note there is not one word regarding the parsonage contract.

Respondents then state (4) petitioners' recovery "appears to be premised on allegations that respondent Hinkle's present ministry is not a Unity Ministry and does not adhere to Unity practice."

The complaint alleged Hinkle broadcast his abandonment of his Unity Ministry; his appropriation of the Church and its properties from its Unity Ministry and Unity trust purposes into his new activities.

3. Its "When Federal Question Was Raised".

Respondents here (5) refer to the sole ground of demurrer on which the Court of Appeal based its decision, i.e., its acceptance of respondents' contentions regarding *Hull*.³

They state (5) incidentally that the California Supreme Court denied a hearing (not, as they state, certiorari).⁴

Respondents hereunder inject their fictionally created "departure from doctrine" argument in order to justify their misapplication of *Hull*.

This action is secular as noted in the Petition and as is submitted to be obvious from the record.

The complaint (CT 1-46; OB 60-70) is captioned "Complaint for recovery of church, church properties and church corporation diverted from church trust purposes for which received, acquired and incorporated;

³*Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* (1969) 393 US 440.

⁴Denials of discretionary hearings by that Court do not add to the authority of the decisions of the Court of Appeal. Many factors enter the granting or denying of such petitions. They were clearly stated in "To Hear or Not to Hear," 3 *Stanford Law Review* 243-69 (1951); 4 *Stanford Law Review* 392-400 (1952).

breach of trust re church, church properties and church corporation; breach of contract, accounting; conspiracy to appropriate and divert church, church properties and church corporation from church trust purposes for which received, acquired and incorporated; damages." *There is nothing ecclesiastical about it.*

Respondents' demurrer stated (CT 137, lines 12-16) that the ". . . body of the Complaint and prayer for relief appear also to attempt to state a derivative action on behalf of the church corporation and to obtain specific enforcement of the contract, an injunction, relief for conversion of property, a declaratory judgment and quiet title to property." *Again, there is nothing secular about that description of the complaint.*

As noted in the record and the Petition *there is no question of interpretation or departure.* The complaint alleges Hinkle's and respondents' abandonment and withdrawal. *That is a secular fact.*

Respondents' RB, on the state appeal, (last paragraph p. 7) described their demurrer as follows: "The principal ground of demurrer was that the court had no jurisdiction over the action as the entire action was premised on interpretations of religious doctrine and requested court interference with religious practice."

That is untrue.

Nothing in the complaint requests the court to interfere with, or interpret, religious practice; all of it relates to recovery of trust property misappropriated from its trust purpose.

Respondents' silence regarding *Watson* and other authorities cited by petitioners, is eloquent.

Respondents tactically confuse the "departure from doctrine" concept, nonexistent in this case, with the *departure with property* by respondents in this case.

The *secular* corporations hold title to all the property; property is *secular*; the corporations were organized under the California Corporations Code and are *secular*. There is *nothing ecclesiastical* about being an officer, director or trustee of the corporations; or the real and personal properties including the trust contributions and donations to the Corporation for the Church; or constructing the manor; or changing the locks on the inner and outer doors of the Church to prevent the investigating committee to proceed under the ecclesiastical proceedings; or any of the other *secular* acts alleged in the complaint in pursuance of said conspiracy and partially stated in the Petition (5-9).

The complaint is to be judged by its substance and not by respondents' misinterpretation of its semantics.

Respondents' misuse of semantics makes "a mockery of language" as stated in *Chase v. Cheney*, 50 Ill 509, hereinafter *Chase*.⁵

A corporation is not ecclesiastical; neither it nor its officers and trustees can exercise any ecclesiastical authority; they have no ecclesiastical function. Such corporations are creatures of statute and their officers and trustees are governed by the statutes. Even ecclesiastical authority is not derived from supernatural or supra-legal sources but from contract between the organizing parties and those later voluntarily becoming members. *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 US 1, hereinafter *Gonzalez*.

There is a complete separation (as walled as the state and church and an extension of that separation) between the *ecclesiastical body* of the church (the congregation which contributes to and maintains it and worships in it in accordance with its specific doc-

⁵Cited in Pet. 18, 28.

trine and discipline) and the *corporation* which is completely secular and excluded from the ecclesiastical realm.

It has always been held by all the cases that in schisms those who adhere to the original doctrine of the church, for which the property was acquired in trust, are entitled to the property and to use it to that original doctrine.

That is the essence of justice.

Note that the Court of Appeal was completely silent as to *Watson* and other cases cited in the briefs and partially noted in the petition.

Corporations are legally qualified to hold property and to conduct business to the same extent as individuals. Corporations hold title in the corporate name and not in the name of any of its officers. Officers are employed by the corporation. They have no sovereignty, they cannot hold any corporate property rights separate from the employer corporation. Nor can any corporate officer own in his own name corporate property except, in imaginable unique circumstances, as agent either for a disclosed or undisclosed principal, or as trustee.

So this case turns on the secular Church Corporation (and its interlocking Manor corporation) and their secular officers and trustees who violated their trust duties and misappropriated the trust property.

Departure from doctrine or schism is a fact of life in many churches. The point is who determines the effect of it—ecclesiastically and secularly. In this case, any ecclesiastical differences were determined by the ecclesiastical authorities of USC and AUC, (and respondents' abandonment, withdrawal and misappropriation of trust property) not by any legislation and not by any secular person or secular act, including any civil court.

In their said RB 20, respondents stated that the cases⁶ petitioners cited "are inapplicable" in the light of *Hull* and *Serbian*.⁷ This meant *all* the cases appellants cited.

This really means a blanket erasure of all the accumulated wisdom and established principles enunciated by the great judges, state and federal, including by this Court. Such contention, tacitly approved by the subject decision, demonstrates the urgent reason for granting the Petition.

Unfortunately, church property controversies and litigation have proliferated since *Hull*.

Rather than a complete obliteration of all established principles as contended by respondents, this Court, post-*Hull*, has clearly indicated the case by case basis of the application of the First Amendment.⁸

Chief Justice Burger's comment, in a comparable regard, is worthy of note and significantly applicable on this point, i.e., in *Walz*, 397 US 678, quoting Justice Holmes in a cited case, "If a thing has been practiced for two hundred years by common consent,

⁶These include *Watson v. Jones*, *supra*; *Gonzalez v. Roman Catholic Archbishop of Manila*, *supra*; *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America*, 344 US 94; *Late Corporation of the Church of . . . Latter Day Saints v. US*, 136 US 1; *Reynolds v. United States*, 98 US 145; *Davis v. Beesom*, 133 US 333; *Bouldin v. Alexander*, 15 Wall 131, 21 LEd 69; *Brundage v. Deardorf*, 55 F 839; *Roshi's Appeal*, 69 Pa 462; *Schnorr's Appeal*, 67 Pa 138; *Rosicrucian Fellowship, et al. v. Rosicrucian Fellowship, etc.*, et al., 39 C2d 121, 245 P2d 481, cert.den. 345 US 938; *Whipple v. Fehsenfeld*, 173 Kan. 427, 249 P2d 638, cert. den. 346 US 813, rhg.den. 346 US 918.

⁷*Serbian Eastern Orthodox Diocese for the United States of America and Canada, et al. v. Dionisije Milivojevich*, 426 US 696.

⁸Examples are *Walz v. Tax Commission of the Church of New York* (1970) 397 US 664, and *Committee for Public Education and Religious Liberties v. Nyquist*, 413 US 756, and the distinct reservations and qualifications in both, particularly the various opinions in *Nyquist*.

it will need a strong case for the Fourteenth Amendment to affect it . . ." to which petitioners add *a fortiori* so regarding established principles, never questioned and consistently observed by *Hull* and *Serbian*.

Further, illustrating the fallacy of the simplistic and dogmatic statements by respondents regarding their interpretation of *Hull*, which would reduce the First Amendment to an inflexible and final definition, are Justice Burger's quotations in *Walz* of Justice Douglas, in a cited case, 397 US 669, "The First Amendment, however, does not say that in every and all respects there should be a separation of Church and State" and also Justice Harlan, in a cited case, same page, that the constitutional neutrality imposed on the Court "is not so narrow a channel that the slightest deviation from an absolutely straight course leads to condemnation."

4. Its "Reasons for Denying the Writ".

Respondents' total reliance (6-9) is on *Hull*. This consists of their discussion of *Hull* and partial, selected quotations, out of context (7-8).

This Court knows best its decision in *Hull* and its proper application. The selected, quoted portions do not apply in this case and are misleading as relating to the record of this case. For instance, civil courts are required to accept as a *fact* ecclesiastical determinations by ecclesiastical authorities and therefore such proper civil court action constitutes the civil court's assignment of that interpretation. In other words, the statement begs the question as applied in this case at bench.

It is not true that the Court would be required to consider whether what Hinkle practices is Unity or not since, as repeatedly noted, he abandoned his Unity Ministry, his ordination, and made and broad-

casted his departure from the said authority and his breach of his contract of employment, in the process of which he misappropriated the property.

Respondents state (9-11) that this Court reaffirmed its *Hull* decision in *Serbian*.

Again, this Court best knows its decision in *Serbian* and its proper application. Both *Hull* and *Serbian* were fully discussed by petitioners in their briefs and the Petition.

5. Its "The Decision Below Is Clearly Correct".

Hereunder, again (11-12), respondents rely upon their contentions regarding *Hull* and *Serbian* and continue their tactic of misstating the record by the statement that if the Court of Appeal had reversed the judgment this case would have required a civil court to determine whether what Hinkle was now practicing was Unity or not.

This, of course, as repeatedly demonstrated, is *untrue*. Hinkle has himself stated that it is not Unity, having abandoned his ordination and purporting to remove the Church from Unity. Also, on the record that is irrelevant since the complaint is directed to the corporation and its officers and trustees, the trust and the trust property and respondents' violation of their legal and statutory duties as trustees.

Further, respondents' said statement is fictional and contrived. The explicit language in *Watson* regarding the misappropriation of church trust property correctly states the law.

The tactical objective of respondents' said technique is to becloud the simple issue that this is a secular trust case and presents the simple issue whether a trustee can breach his trust, for any reason, surrender his obligations as trustee but not surrender the trust

property entrusted to him in trust and on the contrary, appropriate it to a different use and crassly invoke the Religion Clauses of the First Amendment.

Conclusion.

The California law of corporations and trusts determines this case.

As noted in the Petition, respondent corporations are nonprofit, religious corporations, created and bound by the California Corporations Code as are its personnel. The trust status of those corporations, their trust properties and their trust personnel as well as the trust beneficiaries have been noted in the Petition.

The following California Civil Code sections are directly applicable. CC 2217 defines an involuntary trust as one "which is created by operation of law"; CC 2219 defines a trustee as "Every one who voluntarily assumes a relation of personal confidence with another is deemed a trustee" with a definition of the scope of the relationship; CC 2220 provides "*A trust in relation to real and personal property, or either of them, may be created for any purpose or purposes for which a contract may be made*"; CC 2221 provides for the creation of a voluntary trust by the trustor and beneficiary; CC 2222 provides for a voluntary trust created as to the trustee; CC 2223 defines an involuntary trustee as one who "wrongfully detains a thing" holding it in that capacity "for the benefit of the owner"; CC 2224 defines an involuntary trustee as "one who gains a thing by fraud (other stated means and) the violation of a trust, or other wrongful act . . ."; CC 2228 defines the trustee's obligation, i.e., ". . . a trustee is bound to act in the highest good faith toward his beneficiary . . ."; CC 2229 limits the authority of the trustee as to the use of the trust property as follows: "A trustee may not use or

deal with the trust property for his own benefit, or for any other purpose unconnected with the trust, in any manner"; CC 1573 defines a constructive trust as including "In any breach of duty which, without any actually fraudulent intent, gains an advantage to the person in fault, or anyone claiming under him . . ."; CC 3523, codifies the basic equity maxim, i.e., "For every wrong there is a remedy."

A key point is whether an ecclesiastical authority has civil court remedy to enforce its ecclesiastical authority.

Also, whether a contract executed by a church corporation with its secular officers regarding secular property (the parsonage) and also such a contract similarly executed regarding the employment of a temporary minister (Hinkle) are unenforceable in civil courts because such corporation, or the minister (who is no longer ordained, having withdrawn from his ordination and who is additionally a secular officer of the corporation, which latter status is the only relevant status involved in this case) raise the First Amendment.

It is respectfully submitted the contention inherent in that statement approaches the inordinate.

There is no issue for any court to determine, through its civil proceedings, whether there was a departure from doctrine. The departure was an accomplished fact openly broadcast by Hinkle and respondents (and alleged in the complaint and admitted by the demurrer).

The constitutional vice is in the civil court's determination of an ecclesiastical issue, not its recognition of the accomplished fact.

The court in *Bomar v. Mt. Olive Missionary Baptist Church*, 92 CA 618, 268 P 665, 8 (Pet., Appendix K 19), quoted from *Nance v. Busby*, 91 Tenn 303, 18 SW 874,

“ ‘The bald question here is, Can a man or set of men, or a majority of the church organization, by chicanery, deceit and fraud, divert the property of the church organization to a purpose entirely foreign to the purposes of the organization, for their own selfish benefit, whether by the expulsion of members or *in any other fraudulent manner?* *Neither the law nor public policy will sustain such rule.* Fraud vitiates all transactions and, if members are expelled for a fraudulent purpose to carry out a fraudulent scheme, the expulsion is a void act, and of no force or effect whatever. *Equity will compel fair dealing, disregarding all forms and subterfuges, and looking only to the substance of things.’ ”*

Watson also so held.

Petitioners respectfully pray that their Petition be granted.

Respectfully submitted,

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